

## **AGREEMENT**

THIS AGREEMENT dated the 24th day of May, 2005, by and between LEON COUNTY, a charter county and a political subdivision of the State of Florida, with their principle offices located at 301 South Monroe Street, Tallahassee, FL 32301 USA, hereinafter referred to as the "County" and MENTOR ENGINEERING, INC. a corporation under the laws of Alberta, Canada with their principle offices at Suite 230, 2891 Sunridge Way NE, Calgary, Alberta, T1Y7H7, hereinafter referred to as the "Contractor."

## **WITNESSETH**

WHEREAS, the County has determined that it would be in the best interest of the citizens of Leon County, Florida, that the County be able to utilize the services of private persons when such services cannot be reasonably provided by the County; and

WHEREAS, the County has determined that it would be better to contract for these services than to hire the necessary personnel to satisfy the needs of the County; and

WHEREAS, in order to secure the lowest cost for these services, the County has sought and received competitive bids from contractor for such goods and services.

NOW, THEREFORE, in consideration of the following mutual promises, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

### **1. SERVICES TO BE PROVIDED**

- A. The Contractor shall provide the equipment, installation services, and software integration for the Automatic Vehicle Location System (AVL).
- B. The equipment, software and services and warranty for same provided to the County by the Contractor shall be in accordance with the Request For Proposals, BC-03-22-05-21, hereinafter Exhibit A, and the Contractor's Response thereto, hereinafter Exhibit B.
- C. Both Exhibits A and B are incorporated into this Agreement and made a part hereof as if fully set forth herein.
- D. Conflicts between this Agreement and Exhibits A and B shall be resolved in the following precedential order:
  1. Agreement by and between Leon County and Mentor Engineering, Inc.
  2. Exhibit A.
  3. Exhibit B.

2. WORK

Any work to be performed shall be upon the written request of the County Administrator or his designee, which request shall set forth the commencing date of such work and the time within which such work shall be completed.

The performance of Leon County of any of its obligations under Agreement shall be subject to and contingent upon the availability of funds lawfully expendable for the purposes of the Agreement for the current and any future periods provided for within the bid specifications.

3. TIME

The Agreement shall be for a period of one (1) year, commencing on May 25, 2005, and shall continue until May 24, 2006. Permitting the Contractor to continue and finish the work or any part of it after the expiration of the contract time allowed, including extensions, if any, shall in no way act as a waiver on the part of County of any legal remedies available to the County.

4. CONTRACT SUM AND PAYMENTS

The Contractor agrees that for the performance of the Services To Be Provided, as outlined above in Section 1, it shall be remunerated by the County according to the payment schedule contained in the Price List, hereinafter Exhibit C, incorporated into this Agreement and made a part hereof as if fully set forth herein, for a total sum of \$119,169 on completion of the work and acceptance by the County as satisfactory. The County shall make such payments within thirty (30) days of submission and approval of invoice for services.

5. STATUS

The Contractor at all times relevant to this Agreement shall be an independent contractor and in no event shall the Contractor nor any employees or sub-contractors under it be considered to be employees of Leon County.

6. INSURANCE

The Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. (Non-owned, Hired Car).
3. Workers' Compensation and Employers Liability: Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws and Employer's Liability with a limit of \$500,000 per accident, \$500,000 disease policy limit, \$500,000 disease each employee. Waiver of Subrogation in lieu of Additional Insured will suffice.

**B. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**C. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages (County is to be named as Additional Insured).
  - a. The County, its officers, officials, employees and volunteers are to be covered as insureds as respects; liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protections afforded the County, its officers, officials, employees or volunteers.
  - b. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance of self-insurance maintained by the County, its officers,

officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the county, its officers, officials, employees or volunteers.
- d. The Contractor's insurance shall apply separately to each insured against whom claims are made or suit is brought, except with respect to the limits of the insurer's liability.

## 2. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County.

- D. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.
- E. Verification of Coverage. Contractor shall furnish the County with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies at any time.
- F. Subcontractors. Contractors shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

## 7. LICENSES

The Contractor shall be responsible for obtaining and maintaining his city or county occupational license and any licenses required pursuant to the laws of Leon County, the City of Tallahassee, or the State of Florida. Should the Contractor, by reason of revocation, failure to renew, or any other reason, fail to maintain his license to operate, the contractor shall be in default as of the date such license is lost.

8. ASSIGNMENTS

This Agreement shall not be assigned or sublet as a whole or in part without the prior written consent of the County nor shall the Contractor assign any monies due or to become due to him hereunder without the previous written consent of the County.

9. PERFORMANCE BOND

A Performance Bond in the amount of 100% of the estimated project cost shall be supplied by the Contractor at the time of Agreement execution. Also, a payment and material bond for the Agreement amount shall be supplied by the Contractor at the same time.

Performance and Payment and Material Bonds shall provide that, in the event of non-performance on the part of the Contractor the bond can be presented for honor and acceptance at an authorized representative or institution located in Tallahassee, Florida. The performance bond **must** contain a clause stating the following:

In the event of non-performance on the part of the contractor this performance / payment and materials bond can be presented for honor and acceptance at \_\_\_\_\_, which is located in Tallahassee, Florida.

10. HOLD HARMLESS

The Contractor agrees to indemnify and hold harmless the County from all claims, damages, liabilities, or suits of any nature whatsoever arising out of, because of, or due to the breach of this Agreement by the Contractor, its delegates, agents or employees, or due to any act or occurrence of omission or commission of the Contractor, including but not limited to costs and a reasonable attorney's fee. The County may, at its sole option, defend itself or allow the Contractor to provide the defense. The Contractor acknowledges that ten dollars (\$10.00) of the amount paid to the Contractor is sufficient consideration for the Contractor's indemnification of the County.

The obligations of the Contractor under the above paragraph shall not extend to circumstances where the claims, damages, liabilities or suits are caused solely by the negligent or tortuous acts, errors or omissions of the County, its officers, delegates, employees, agents or consultants, including negligence in (1) the preparation of the contract documents including Exhibit A, or (2) the giving of directions or instructions with respect to the requirements of the Contract by order or request of the County, its officers, delegates, employees, agents or consultants. The obligations of the Contractor shall not extend to circumstances where the injury, or death, or damages is caused, in whole or in part, by the negligence of any third party operator, not including an assignee or subcontractor of the Contractor, subject to the right of contribution as provided in the next sentence below. In case of joint or concurrent negligence of the parties hereto giving rise to a claim or loss against either one or both, each shall have full rights of contribution from the other.

11. MINORITY BUSINESS ENTERPRISE (M/WBE) PARTICIPATION

The Contractor shall meet or exceed the M/WBE participation levels stated in the M/WBE Participation Statement included as part of the bid response for this project, except when the County Good Faith Committee approves an exception.

Any "Good Faith Statement" provided by a Contractor shall follow the requirements of the Florida Statutes, and must demonstrate through documentation that every reasonable effort has been made to achieve the requested percentage.

For those M/WBE firms listed in their bid, Contractors shall be responsible for securing proof of their M/WBE certification and providing copies to the County M/WBE Office.

Also required is a monthly reporting system of the work done by and payments made to certified minority business enterprises as a part of this project. The reports shall detail each invoice submitted to the County and a break down of payments to all subcontractors therein by M/WBE classification.

12. AUDITS, RECORDS, AND RECORDS RETENTION

The Contractor agrees:

- a. To establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices, which sufficiently and properly reflect all revenues and expenditures of funds provided by the County under this Agreement.
- b. To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of five (5) years after termination of the Agreement, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement.
- c. Upon completion or termination of the Agreement and at the request of the County, the Contractor will cooperate with the County to facilitate the duplication and transfer of any said records or documents during the required retention period as specified in paragraph 1 above.
- d. To assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, state, or other personnel duly authorized by the County.
- e. Persons duly authorized by the County and Federal auditors, pursuant to 45 CFR, Part 92.36(I)(10), shall have full access to and the right to examine any of provider's

Agreement and related records and documents, regardless of the form in which kept, at all reasonable times for as long as records are retained.

- f. To include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

### 13. MONITORING AND INSPECTION

The Work and any and all parts thereof shall be subject to such inspection as County determines to be appropriate, consistent with the relevant provisions of the Contract, if any, prior to acceptance by County. The County, or their representatives, shall have access to the Work at any time during working hours where any part of the Work is being carried out and may make examinations and such tests of the Work as they may think fit. Should the Work or any part thereof not be in accordance with the requirements of the Contract, County shall have the right to reject the Work and require its correction or replacement at the Contractor's expense. County, as the case may be, shall inform the Contractor of the reasons for any such rejection.

The Contractor shall provide all assistance and facilities, test pieces, samples and documentation that County may reasonably require for the carrying out of any such inspection, and the Contractor shall forward such test pieces and samples to such person or location as the County may direct. Inspection by the County shall not relieve the Contractor from responsibility to meet the requirements of the Contract.

Contractor shall correct all noted deficiencies identified by the County within 10 business days after receiving the County's assessment. The Contractor's failure to correct noted deficiencies may, at the sole, reasonable discretion of the County, result in any one or any combination of the following: (1) the Consultant being deemed in breach or default of this Contract; (2) the withholding of payments equal only to the amount to cover the deficiencies; and (3) the termination of this Agreement for Cause.

### 14. TERMINATION

Leon County may terminate this Agreement without cause, by giving the Contractor thirty (30) days written notice of termination. The County Agrees to remunerate the Contractor for all work satisfactorily performed to the date of termination. Either party may terminate this Agreement for cause by giving the other party hereto ten (10) days written notice of termination. The County shall not be required to give Contractor such ten (10) day written notice if, in the opinion of the County, the Contractor's performance of its obligations is so unsatisfactory that it cannot be remedied by the Contractor within a reasonable time. In such case, the County may immediately terminate the Agreement by mailing a notice of termination to the Contractor.

15. PUBLIC ENTITY CRIMES STATEMENT

In accordance with Section 287.133, Florida Statutes, Contractor hereby certifies that to the best of his knowledge and belief neither Contractor nor his affiliates has been convicted of a public entity crime. Contractor and his affiliates shall provide the County with a completed public entity crime statement form no later than January 15 of each year this Agreement is in effect. Violation of this section by the Contractor shall be grounds for cancellation of this Agreement by Leon County.

16. NON-WAIVER

Failure by the County to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of the same, or of any other terms, conditions or acts; but the same shall be and remain at all times in full force and effect.

17. REVISIONS

In any case where, in fulfilling the requirements of this Agreement or of any guarantee, embraced in or required thereby it is necessary for the Contractor to deviate from the requirements of the bid, Contractor shall obtain the prior written consent of the County.

18. VENUE

Venue for all actions arising under this Agreement shall lie in Leon County, Florida.

19. CONSTRUCTION

The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida.

20. NOTICE

Any notice or other communication under this Contract given by either party to the other shall be in writing, in English, and shall be made by hand delivery, registered mail, by facsimile or reliable local or overnight courier addressed to the party for whom it is intended at the address or the fax number in the Contract (or to such substitute addresses or fax number as may by notice have been substituted). All such notices and communications shall be deemed to have been duly given when delivered by hand, if personally delivered; when confirmation is received, if by registered mail; when receipt is acknowledged, if faxed; or the next business day if by courier.



To Contractor:	To County:
Mike Koebel	Parwez Alam
Director of Sales	County Administrator
Mentor Engineering Inc.	Leon County Courthouse, 5th Floor
Building 1, 2nd Floor	301 South Monroe Street
Suite 230	Tallahassee, FL 32301
2891 Sunridge Way NE	
Calgary, AB	
T1Y 7K7	
Phone: (403) 777-3760 ext. 765	Phone: (850) 488-9962
Fax: (403) 777-3769	Fax:

21. FORCE MAJEURE

Neither party shall be liable to the other for any failure to perform any obligations under this Contract due to causes which are beyond either parties reasonable control and of a nature which neither party has the power or authority to remedy, including without limitation, acts of god, acts of terrorism, acts of civil or military disturbances, fires, floods, epidemics, wars, and riots. In the event of such an occurrence, the party claiming relief thereon shall give prompt written notice thereof to the other party and any time for performance of an obligation shall be extended by time equal to the length of delay attributable to such occurrence.

22. DISPUTE RESOLUTION

- A. Any and all disputes that arise in the course of this contract can follow any and/or all of the following three (3) courses:
- 1) Settlement - A first attempt will be made to settle any dispute between the two parties internally in a timely fashion.
  - 2) If the dispute is not resolved within a twenty-one (21) day period, the parties shall attempt to settle the dispute by the process of mediation.
    - (a) Within a further period of twenty-one (21) days, the parties shall select a mediator.
    - (b) The mediator so appointed shall endeavor to settle the dispute between the parties to the mutual satisfaction of all parties. Both parties agree to co-operate fully with the mediator to achieve this outcome, although acknowledge that the mediator has no power or authority to make or impose any judgment, determination or order on either party.
    - (c) The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement

prior to or during the mediation process is to attempt to settle the dispute between the parties. No party may use, either directly or indirectly, any information or documents obtained through the dispute resolution process for any other purpose than in an attempt to settle the dispute.

- (d) If, after the mediation conference has taken place, the dispute has still not been resolved to the mutual satisfaction of all parties, either party may in writing terminate the dispute resolution process provided for in this clause and may then commence legal proceedings relating to the dispute.
- (e) If the mediator charges a fee, the parties to the mediation shall share such fees equally.
- 3) Court of Law – Should mediation fail, either Party may proceed with court action with all the available remedies to the court of competent jurisdiction. The costs of any court action will be the responsibility of each Party.
- B. Once a dispute for each individual issue has been resolved using any of the above listed remedies, no other action, regardless of its form, shall be brought by either Party regarding said issue.
- C. In the event of any dispute between County and a third-party arising from Contractor's work pursuant to this Contract, County agrees to notify Contractor of said dispute in a timely manner, and not to unreasonably withhold opportunity for Contractor to participate in dispute resolution.

WHEREFORE, the parties have set their hands and seals effective the date whereon the last party executives this Agreement.

**CONTRACTOR**

WITNESS: \_\_\_\_\_ BY: \_\_\_\_\_  
President

WITNESS: \_\_\_\_\_ DATE \_\_\_\_\_

**(CORPORATE SEAL)**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005.  
By \_\_\_\_\_, of \_\_\_\_\_,  
(Name of officer or agent, title of officer or agent) (Name of corporation acknowledging)

a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is  
(State or place of incorporation)  
personally known to me or has produced \_\_\_\_\_ as  
identification. (type of identification)

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Print, Type or Stamp Name of Notary

\_\_\_\_\_  
Title or Rank

\_\_\_\_\_  
Serial Number, If Any

**LEON COUNTY, FLORIDA**

BY: \_\_\_\_\_  
Cliff Thael, Chairman  
Board of County Commissioners

DATE: \_\_\_\_\_

ATTEST:  
BOB INZER, CLERK OF THE COURT  
LEON COUNTY, FLORIDA

By: \_\_\_\_\_

APPROVED AS TO FORM:  
LEON COUNTY ATTORNEY'S OFFICE

By: \_\_\_\_\_  
Herbert W.A. Thiele, Esq.  
County Attorney